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5 IN THE UNITED STATES DISTRICT COURT
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9 INGENUITY 13 LLC,

No. C 12-04977 WHA

10 Plaintiff,

11 v.

12 JOHN DOE,

**ORDER GRANTING EX PARTE
MOTION FOR EXPEDITED
DISCOVERY**

13 Defendant.

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15 Plaintiff Ingenuity 13 LLC asserts claims of copyright infringement against an
16 unidentified John Doe for downloading and distributing plaintiff's copyrighted adult video
17 without permission. Plaintiff claims to have identified the Internet Protocol address for the
18 unidentified Doe and seeks permission to take limited, expedited discovery in order to obtain the
19 name and contact information of the Doe associated with that IP address.20 Rule 26(d) allows a court to authorize early discovery before the Rule 26(f) conference
21 where it is in the interests of justice. When the identity of defendant is not known before a
22 complaint is filed, the plaintiff "should be given an opportunity through discovery to identify the
23 unknown defendants unless it is clear that discovery would not uncover the identities, or that the
24 complaint would be dismissed on other grounds." *Gillespie v. Civiletti*, 629 F.2d 637, 642 (9th
25 Cir. 1980). Courts have examined whether (1) the Doe defendant is identified with sufficient
26 specificity that the court can determine that the defendant is a real person who can be sued in
27 federal court, (2) plaintiff has taken steps to locate and identify the defendant, (3) the action can
28 withstand a motion to dismiss, and (4) the discovery is likely to lead to identifying the

1 information that will permit service of process. *AF Holdings LLC v. John Doe*, No. Civ. 124218
2 WHA (N.D. Cal. Sept. 5, 2012) (Alsup, J.).

3 Plaintiff has shown good cause for limited, expedited discovery into the identify of Doe
4 defendant. Plaintiff has alleged that it is the exclusive rights holder to the copyrighted video
5 (Compl. ¶¶ 18–19, Exh. A). Plaintiff has gathered evidence of the Doe’s infringing activities
6 (Hansmeier Decl. ¶¶ 14–27). There is evidence that Doe used an online peer-to-peer media
7 distribution system, BitTorrent, to download plaintiff’s copyrighted video and distribute
8 plaintiff’s copyrighted video to third parties (*id.* ¶ 22–27). Plaintiff’s agent downloaded the
9 video file that Doe unlawfully distributed and confirmed that the file consisted of plaintiff’s
10 copyrighted video (*id.* ¶ 25). All of this information was gathered by a technician using
11 procedures designed to ensure that the information gathered about Doe was accurate (*id.* ¶ 16).
12 Plaintiff has identified the ISP that provided Internet access to Doe as Wave Broadband (*id.* ¶¶
13 24, 28). Based on the IP address, plaintiff pleads that defendant resides in or committed
14 copyright infringement in California (Compl. ¶ 6). When presented with the IP address and the
15 date and time of infringing activity, Wave Broadband should be able to identify the name and
16 address of Doe defendant because that information is contained in the ISP’s subscriber activity
17 log files (Hansmeier Decl. ¶ 22). Plaintiff’s request for discovery of Doe’s identity is not
18 prejudicial because the request is narrowly tailored to basic contact information. As the Second
19 Circuit has persuasively articulated, “expectation of privacy for sharing copyrighted [works]
20 through an online file-sharing network [is] simply insufficient to permit [Doe defendant] to avoid
21 having to defend against a claim of copyright infringement.” *Arista Records, LLC v. Doe 3*, 604
22 F.3d 110, 117–24 (2d Cir. 2010) (allowing discovery in similar circumstances). Moreover, there
23 is only one Doe defendant in this action, unlike other actions where attempts to identify multiple
24 Does at once were denied. *See, e.g., Malibu Media, LLC v. John Does 1 though 10*, Civ. No. 12-
25 3623-ODW (C.D. Cal. June 27, 2012) (Wright, J.) (allowing ex parte discovery for first Doe
26 defendant); *Discount Video Center, Inc. v. Does 1-5041*, Civ. No. 11-2694 CW (N.D. Cal. Sept.
27 23, 2011) (Grewal, M.J.) (same).

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1 For the reasons stated, this order **GRANTS** the motion as follows:

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3 1. Plaintiff immediately may serve Rule 45 subpoena on Wave Broadband to obtain

4 information to identify the Doe defendant, including the name, address, telephone

5 numbers, email addresses, and media access control addresses. The subpoena shall have

6 a copy of this Order attached.

7 2. Any information disclosed to the plaintiff in response to a Rule 45 subpoena may be

8 used by the plaintiff solely for the purpose of protecting plaintiff's rights as set forth in its

9 complaint.

10 3. Plaintiff and any entity which receives a subpoena shall confer, if necessary, with

11 respect to the issue of payment for the information requested in the subpoena or for

12 resolution of IP addresses which are not controlled by such entity, duplicate IP addresses

13 that resolve to the same individual, other IP addresses that do not provide the name and

14 other information requested of a unique individual, or for the entity's internal costs to

15 notify its customers.

16 4. Any entity which receives a subpoena and elects to charge for the costs of production

17 shall provide a billing summary and any cost reports that serve as a basis for such billing

18 summary and any costs claimed by such entity.

19 5. If any entity subpoenaed pursuant to this order wishes to move to quash the subpoena,

20 it must do so before the return date of the subpoena, which shall be 28 days from the date

21 of service.

22 6. The subpoenaed entity shall preserve any subpoenaed information pending the

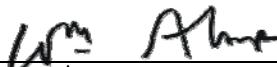
23 resolution of any timely-filed motion to quash.

24 **IT IS SO ORDERED.**

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26 Dated: October 22, 2012.

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28 WILLIAM ALSUP
UNITED STATES DISTRICT JUDGE